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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIFTH APPELLATE DISTRICT

JAMES BOONE,

Plaintiff and Appellant,

v.

PETER SALCEDO et al.,

Defendants and Respondents.

F078463

(Super. Ct. No. 16C0396)

OPINION

THE COURT[*]

APPEAL from a judgment of the Superior Court of Kings County. Valerie R. Chrissakis, Judge.

James Boone, in pro. per., for Plaintiff and Appellant.

Xavier Becerra, Attorney General, Danielle F. O'Bannon, Assistant Attorney General, Alberto L. Gonzalez and Matthew W. Roman, Deputy Attorneys General, for Defendants and Respondents.

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[*] Before Levy, Acting P.J., Franson, J. and Peña, J.

Plaintiff James Boone injured his knee when he fell into a trench at a construction site at the Corcoran State Prison while working under the Inmate Ward Labor (IWL) program. He brought a negligence action against correctional officers, a construction supervisor, electricians, and a plumber. Plaintiff alleged they failed to properly maintain and mark the open trenches at the worksite, failed to properly oversee or supervise worker safety, failed to summon or immediately get him medical attention upon learning of his injury, and required him to walk on the injured leg from the worksite back to his yard. Defendants moved for summary judgment, contending plaintiff was eligible for workers' compensation benefits and his claims were barred under the workers' compensation exclusive remedy rule. (See Lab. Code, §§ 3600, 3601, 3602, 3351.)[1] The trial court granted summary judgment. Plaintiff appealed.

We reach the following conclusions. First, plaintiff qualifies as an "employee" under the definition contained in section 3351 and, therefore, is subject to the workers' compensation statute and its exclusive remedy rule. Second, on a question of statutory interpretation, section 3852 does not authorize plaintiff to sue individuals who qualify as coemployees. Instead, persons who qualify as plaintiff's coemployees are protected by the limited immunity provided by section 3601, subdivision (a). Third, the correctional officers and other defendants were plaintiff's coemployees under the IWL program and, therefore, are entitled to the immunity provided by the exclusive remedy rule. Fourth, on another question of statutory interpretation, the medical treatment plaintiff has received for the knee injury constitutes a workers' compensation benefit and the fact he has not been paid cash benefits for his injuries does not mean he was "not compensated by this division" for purposes of section 3370, subdivision (a)(9). Fifth, the injuries arising from the second type of wrong alleged—that is, the failure to summon medical attention—are covered by the workers' compensation statute and its exclusive remedy rule. The scope of this coverage is determined in part by the broad test for industrial causation, which

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1 All unlabeled statutory references are to the Labor Code.

covers new or aggravated injuries that would not have occurred without the initial workplace injury. Under the test for industrial causation, all the injuries alleged arose out of the assigned employment. Consequently, the exclusive remedy rule bars plaintiff from recovering under a cause of action alleging the defendants failed to summon medical attention.

We therefore affirm the judgment.

FACTS

Defendants' view of the facts essential to their motion for summary judgment is contained in their separate statement of undisputed material facts, which was limited to the following six paragraphs:

> "1. Under the Inmate Ward Labor ("IWL") program, inmates are employed by the California Department of Corrections and Rehabilitation ("CDCR") to work with, and under the supervision of, CDCR staff employees. The IWL program allows inmates to earn pre-apprenticeship and other construction-related certificates. [Citation.]
>
> "2. In 2015, Plaintiff James Boone was an inmate incarcerated by CDCR at Corcoran State Prison. [Citation.]
>
> "3. On November 24, 2015, Plaintiff was working within the course and scope of his duties as an employee of CDCR through the IWL program. [Citation.]
>
> "4. On November 24, 2015, Peter Salcedo, Jose Rios, Sergio Munoz, Joseph Westcott, Juan Gamboa, Daniel Sorenson, and Juan Rodriguez were employees of CDCR, working with and supervising inmates through the IWL program. [Citation.]
>
> "5. On November 24, 2015, Plaintiff was instructed to work at construction site 3-A. [Citation.]
>
> "6. Plaintiff alleges that, while working at site 3-A, he fell into a hole or trench resulting in injury to his right knee. [Citation.]"

In his opposition papers, plaintiff asserted he was not participating in the IWL program as a matter of free choice, but was forced to work or face disciplinary action for

refusing to work. Plaintiff characterized his situation as "being slaved by being ordered to perform back breaking labor" and, thus, he never was employed as defendants claim. Plaintiff also asserted that at no time was he ever afforded the opportunity to earn pre-apprenticeship or other construction-related certificates and he was not properly trained to do the tasks he was performing at the site. In addition, plaintiff contended CDCR staff were not working with the inmate laborers on November 24, 2015, and failed to supervise them, which could have prevented his injury.

Plaintiff addressed the subject of workers' compensation benefits by attaching to his complaint a copy of a December 8, 2015, "NOTICE REGARDING TEMPORARY DISABILITY BENEFITS" from the State Compensation Insurance Fund. The notice advised plaintiff of "the status of temporary disability payments for your workers' compensation knee (right) injury of November 24, 2015." The notice stated:

> "We are advising you that liability for this injury has been accepted. While there are no cash benefits due at this present time per [section] 3370(a)(3), you are entitled to medical treatment to cure or relieve the effects of the injury, which will be provided to your through your institution's medical unit. If you wish any further information about your benefits while you are incarcerated, you may call your facility's workers' compensation inmate coordinator.
>
> "You have up to one year after your release from the institution to request workers' compensation benefits by notifying State Compensation Insurance Fund and/or to file an application for adjudication of claim with the Workers' Compensation Appeals Board."

Details relating to the subsequent medical treatment plaintiff received are contained in the "Health Care Services Request Form[s]" that plaintiff attached to his complaint. Those details are not relevant to the legal issue addressed and decided in this appeal and, therefore, are not included in this opinion.

PROCEEDINGS

Administrative Remedies

After his injury, plaintiff submitted a claim to the Victim Compensation and Government Claims Board under the Government Claims Act (Gov. Code, § 810 et seq.) and pursued an inmate grievance with the CDCR.[2] In April 2016, the claims board denied plaintiff's claim. In September 2016, CDCR issued a third level appeal decision denying plaintiff's appeal, which exhausted plaintiff's administrative remedies. The written decision described plaintiff's assertion that staff, not being aware of the seriousness of the injury, directed him to walk from the construction site to the Facility 3C clinic. The decision also noted a workers' compensation claim had been filed on plaintiff's behalf. CDCR's denial of the appeal was explained as follows: "The appellant is advised that monetary compensation for issues other than property appeals is outside of the scope of the appeals process. Therefore, no relief is deemed appropriate at the [Third Level of Review]."

The Lawsuit

In 2016, plaintiff filed a complaint in Kings County Superior Court. The operative pleading is plaintiff's first amended complaint filed in April 2017. Plaintiff brought a general negligence action against (1) Peter Salcedo, correctional officer; (2) Jose Rios, correctional officer; (3) Sergio Munoz, correctional officer; (4) Joseph Westcott, construction supervisor one; (5) Daniel Sorenson, plumber; (6) Juan Rodriguez, electrician-foreman; and (7) Juan Gamboa, electrician. Plaintiff alleged the defendants were "the legal (proximate) cause of damage to plaintiff" and set forth the acts or omissions by which defendants negligently caused the damage to plaintiff. The negligent acts or omissions alleged were the failure to properly maintain and mark the open trenches at the work site; the failure to properly oversee or supervise worker safety at the

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[2] "[T]he cases make it plain that plaintiff's obligation to exhaust the administrative remedies available to prisoners … is independent of the obligation to comply with the Government Claims Act." (*Parthemore v. Col* (2013) 221 Cal.App.4th 1372, 1382.)

site; the failure to "take reasonable actions to summon[], or immediately get[,] plaintiff the care needed" after plaintiff requested medical attention; and requiring plaintiff to walk on the injured leg from the worksite back to his yard and then to see medical staff.

Plaintiff's allegations of damages were, for the most part, general in nature and did not specifically attribute particular items of damage to particular negligent acts or omissions. Thus, plaintiff did not specifically allege some injuries were the result of the fall into the trench and other injuries were the result of being forced to walk on the injured knee after the fall.[3] Based on our review of the record, it appears plaintiff's reply brief filed with this court is the first place he specifically argued the negligent lack of care after the fall *aggravated* the preexisting injury caused by the fall. Also, plaintiff's complaint did not anticipate the defense that workers' compensation provided his exclusive remedy. As a result, the complaint did not make specific allegations about his status as an employee and did not allege he reverted to the status of prisoner and was no longer an employee when some of the post-fall negligence occurred.[4]

Motion for Summary Judgment

In July 2018, defendants filed a motion for summary judgment on the ground that plaintiff's complaint was "barred under the workers' compensation exclusive remedy rule." In September 2018, plaintiff submitted his opposition to the motion. Plaintiff argued he had not received any workers' compensation benefits and his claims against the so-called coemployees were authorized by section 3852, which states that a claim for workers' "compensation does not affect [an employee's] claim or right of action for all

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[3] However, plaintiff alleged he "was ordered to walk from the worksite, stopping every few steps to prevent from being in so much pain, to the IWL equipment yard." A reasonable inference from these alleged facts is that the allegedly negligent conduct of ordering plaintiff to walk from the worksite, instead of providing appropriate medical care, caused him pain and suffering beyond that caused by the fall alone. (See Code Civ. Proc., § 452 [construction of pleading].)

[4] The theory about plaintiff reverting from employee status to prisoner status is addressed in parts VI and VII of this opinion.

damages proximately resulting from the injury … against any person other than the employer." In plaintiff's view, he is suing "person[s] other than the employer" and, therefore, section 3852 allows him to proceed with the lawsuit against defendants. In October 2018, defendants filed a reply, arguing the immunity provided to coemployees by section 3601 was the controlling statute.

On October 10, 2018, the trial court held a hearing on the motion for summary judgment. Plaintiff appeared telephonically. After hearing arguments, the court took the matter under submission.

Trial Court's Decision

On October 11, 2018, the trial court filed a written order granting summary judgment in favor of defendants. The court concluded workers' compensation benefits were plaintiff's exclusive avenue for relief relating to his negligence claim against coemployees for injuries sustained when he fell into the trench. The court concluded section 3852 did not apply because the current version of section 3601 was controlling as the defendants were "any other employee of the employer acting within the scope of his or her employment …." (§ 3601, subd. (a).)

In completing the first step of the three-step analysis applied to motions for summary judgment (i.e., identifying the issues framed by the pleading), the trial court recognized that plaintiff's allegations of negligent conduct went beyond the acts and omissions that caused him to fall into the trench. The court concluded plaintiff's complaint also alleged defendants failed to take reasonable actions to summon or immediately get plaintiff the medical care needed. Consequently, the court addressed whether plaintiff could pursue a claim for damages based on failing to summon immediate medical care or requiring plaintiff to walk on the injured leg. The court concluded defendants still were acting within the scope of employment when the post-fall negligence was alleged to have occurred and they had not stepped out of their coemployee or supervisorial roles. Thus, the court determined the exclusive remedy provision of section 3601 applied to all of the negligence claims alleged in the complaint,

regardless of whether that negligence caused plaintiff to fall into the trench or caused additional pain, suffering or injuries to his knee after the fall. In November 2018, plaintiff filed a notice of appeal.

DISCUSSION

I. STANDARD OF REVIEW

A defendant asserting that the action has no merit may move for summary judgment. (Code Civ. Proc., § 437c, subd. (a)(1).) The court shall grant a motion for summary judgment, "if all the papers submitted show that there is no triable issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." (Code Civ. Proc., § 437c, subd. (c).) To determine whether a triable issue of material fact exists, the court must consider all evidence set forth in the moving papers and all inferences reasonably deducible from the evidence. (*Ibid.*) A triable issue of material fact exists if, "the evidence would allow a reasonable trier of fact to find the underlying fact in favor of the party opposing the motion in accordance with the applicable standard of proof." (*Aguilar v. Atlantic Richfield Co*. (2001) 25 Cal.4th 826, 845.)

Appellate courts conduct an independent (i.e., de novo) review to determine whether an issue of material fact exists and whether the moving party was entitled to summary judgment as a matter of law. (*Brantley v. Pisaro* (1996) 42 Cal.App.4th 1591, 1601.) Appellate courts apply the same three-step analysis required of the trial court. (*Serri v. Santa Clara University* (2014) 226 Cal.App.4th 830, 858 (*Serri*).) First, we identify the issues framed by the pleadings. (*Ibid*.) When a defendant moves for summary judgment, the causes of action or theories of recovery set forth in the complaint provide the foundation for the issues addressed in the defendant's motion. Second, we determine whether the moving party's showing has established facts justifying judgment in its favor. (*Ibid*.) Third, when the moving party has carried its initial burden, we address whether the opposing party has demonstrated the existence of a triable issue of material fact. (*Ibid*.) Appellate courts "view the evidence in a light favorable to plaintiff as the losing party." (*Saelzler v. Advanced Group 400* (2001) 25 Cal.4th 763, 768.)

Consequently, a losing plaintiff's evidentiary submission is liberally construed, and the moving party's showing is strictly scrutinized with any evidentiary doubts or ambiguities resolved in plaintiff's favor. (*Ibid*.) In accordance with this principle, when conflicting inferences can be reasonably drawn from the evidence, a triable issue of fact is deemed to exist. (Code Civ. Proc., § 437c, subd. (c).)

II. PLAINTIFF'S STATUS AS AN EMPLOYEE

Plaintiff's first claim of trial court error asserts workers' compensation cannot be his exclusive remedy against defendants because he was not an "employee." He contends the facts show he is more aptly considered a slave, servant or inmate rather than an employee because employees are entitled to unionize, to strike and to receive minimum wage, none of which were available to him. Plaintiff also asserts he could not refuse the assignment without suffering severe, adverse consequences and, therefore, he was not a true employee.

We recognize that plaintiff's argument might have some merit if the common law test for "employee" or the ordinary meaning of that word applied. However, in this case, neither the common law test nor the ordinary meaning determine the reach of the workers' compensation statute and its exclusive remedy provisions. Instead, plaintiff's status as an "employee" is determined by the way the Legislature defined that term in the Labor Code. The technical definition of "employee" adopted in section 3351 states an employee is "every person in the service of an employer under any appointment or contract of hire or apprenticeship, express or implied, oral or written, whether lawfully or unlawfully employed, and includes: [¶] … [¶] (e) All persons incarcerated in a state penal or correctional institution while engaged in assigned work or employment …." Thus, whether plaintiff was an "employee" for purposes of the workers' compensation statute depends on the application of the elements of this definition to the facts of this case.

Here, the undisputed facts establish that plaintiff was an inmate incarcerated at the Corcoran State Prison in November 2015. The undisputed facts also establish that on

November 24, 2015, plaintiff was assigned to work in the IWL program and fell into the trench while working within the course and scope of that assignment. Consequently, the undisputed facts establish (1) plaintiff was a "person incarcerated in a state … correctional institution" and (2) he fell into the trench "while engaged in assigned work." (§ 3351, subd. (e).) Based on these two elements, we conclude plaintiff met the statutory definition of "employee" when he fell into the trench. In short, the facts raised by plaintiff to argue he was not an employee are not material to the application of the statutory definition. Consequently, those factual assertions do not create a triable issue of material fact relating to his status as an "employee" under section 3351's definition.

III. SECTION 3852 AND ACTIONS AGAINST THIRD PARTIES

Plaintiff's second claim of trial court error asserts his negligence claims against the correctional officers, construction supervisor, plumber, and electricians are allowed by section 3852, which provides in part: "The claim of an employee … for [workers'] compensation does not affect his or her claim or right of action for all damages proximately resulting from the injury … *against any person other than the employer*." (Italics added.) Plaintiff contends defendants qualify as "person[s] other than the employer" for purposes of section 3582 and, therefore, he may pursue a negligence action against them.

The liability of an employee for negligently injuring another employee is addressed in section 3601, subdivision (a):

> "Where the conditions of compensation set forth in Section 3600 concur, the right to recover such compensation, pursuant to the provisions of this division is, except as specifically provided in this section, *the exclusive remedy for injury* or death of an employee *against any other employee* of the employer *acting within the scope of his or her employment*."[5] (Italics added.)

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[5] The exceptions specifically set forth in section 3601, subdivision (a) address injuries caused by (1) the willful and unprovoked physical act of aggression of the other

The Supreme Court described section 3601, subdivision (a) as providing immunity to coworkers and stated the Legislature added the provision to "prevent employees from circumventing the exclusivity rule by bringing lawsuits for work-related injuries against coemployees, who in turn would seek indemnity from their employers." (*Torres v. Parkhouse Tire Service, Inc.* (2001) 26 Cal.4th 995, 1002 (*Torres*).) Thus, "[f]or conduct committed within the scope of employment, employees, like their employers, should not be held subject to suit." (*Ibid.*) Compared to prior law, the enactment of subdivision (a) of section 3601 " 'severely limited a preexisting right to freely sue a fellow employee for damages.' " (*Torres, supra*, at p. 1002.)

Having set forth the text of sections 3852 and 3601, subdivision (a), we turn to the question of how those provisions fit together. This question is a legal issue involving the interpretation of statutes and is subject to our independent review. (*Mikkelsen v. Hansen* (2019) 31 Cal.App.5th 170, 178 [interpretation of a statute is a question of law subject to de novo review].) Plaintiff argues section 3852 controls and authorizes his action for damages.

First, we conclude there is no explicit or literal conflict between the statutory text of section 3852 and the coworker immunity provision of section 3601, subdivision (a). Section 3852 simply states that a claim for workers' compensation benefits "does not affect" the employee's right of action for damages "against any person other than the employer." This language does not address, one way or the other, whether an employee has a right of action against coworkers. If such a right of action exists, then section 3852 tells us that the right of action will continue to exist even if the injured employee claims workers' compensation benefits. If no right of action exists, then section 3852 has no application. Stated another way, section 3852 does not guarantee that no other statutory provision affects the employee's rights against coworkers or other nonemployers.

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employee and (2) the intoxication of the other employee. These exceptions are not relevant to this appeal.

Second, we conclude the coworker immunity provision of section 3601, subdivision (a) addresses the circumstances in which an injured employee may sue a coworker—that is, has a right of action against a coworker. It explicitly grants coworkers immunity for injuries caused by acts within the scope of employment, subject to two exceptions that are not relevant in this case. Because section 3601, subdivision (a) explicitly addresses an employee's right of action against coworkers, we reject plaintiff's contention that section 3852 controls and authorizes him to sue defendants.

This interpretation is required by decisions of the Supreme Court, which include *Torres* and *Hendy v. Losse* (1991) 54 Cal.3d 723 (*Hendy*). In *Hendy*, the court discussed the 1937 enactment of section 3852 and the 1959 amendment of section 3601 to include a limited immunity for coemployees. (*Hendy*, at pp. 733–734.) When section 3852 was enacted, lawsuits against coemployees were permitted. (*Hendy*, at p. 733) That changed in 1959 when section 3601 was amended to grant "a limited immunity to employees. That immunity protects employees from damage actions by coemployees, but only if the defendant was acting within the scope of employment when that defendant's conduct injured the plaintiff." (*Hendy*, at p. 734.) Thus, section 3601 determines the extent a coworker is immune from liability for injuries caused to other workers and that immunity is not altered by section 3852.

The reach of the immunity provided to coworkers by section 3601 is illustrated by various cases that discuss and apply California's horseplay doctrine. "In general, if an employer condones what courts have described as 'horseplay' among its employees, an employee who engages in it is within the scope of employment under section 3601, subdivision (a), and is thus immune from suit, unless [the statutory] exceptions apply." (*Torres*, *supra*, 26 Cal.4th at p. 1006, citing *Oliva v. Heath* (1995) 35 Cal.App.4th 926, 933.)

To summarize, the trial court correctly interpreted the workers' compensation statutes when it concluded coworkers were protected by section 3601, subdivision (a) and section 3852 did not eliminate that protection. (See *Torres*, *supra*, 26 Cal.4th at p. 1002;

Hendy, supra, 54 Cal.3d at p. 730 [§ 3601 "prohibits actions against coemployees for injuries they cause when acting within the scope of their employment"].)

IV. DEFENDANTS' STATUS AS THIRD PARTIES

Plaintiff's third claim of trial court error asserts that defendants are not entitled to any protection under section 3601 because defendants are properly characterized as third parties and not as coemployees acting within the scope of their employment. Plaintiff argues defendants Salcedo, Munoz and Rios retained their status as correctional officers of CDCR and were not working with plaintiff on the construction project.

Like the trial court, we conclude the undisputed fact that on November 24, 2015, the defendants "were employees of CDCR, working with and supervising inmates through the IWL program" is sufficient to establish the correctional officers were coemployees of plaintiff for purposes of the workers' compensation statute. The presence of correctional officers to oversee inmates working in the IWL program is essential to the program. Therefore, correctional officers are properly classified as employees of CDCR's IWL program and are acting within the scope of their employment with the program while supervising inmates performing construction work. Similarly, the construction supervisor, plumber and electricians participating in the IWL program are properly classified as coemployees of plaintiff.

V. INJURIES NOT COMPENSATED BY WORKERS' COMPENSATION

Despite the resolution of the foregoing issues, plaintiff's fourth claim of trial court error asserts he still is entitled to file a suit for damages because section 3370, subdivision (a)(9) states: "Nothing in this division shall affect any right or remedy of an injured inmate for injuries *not compensated* by this division."[6] (Italics added.) Plaintiff

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[6] Section 3370 provides: "(a) Each inmate of a state penal or correctional institution shall be entitled to the workers' compensation benefits provided by this division for injury arising out of and in the course of assigned employment, ... subject to all of the following conditions: [¶] ... [¶] (2) The inmate shall not be entitled to any temporary disability indemnity benefits while incarcerated in a state prison. [¶] (3) No benefits

contends this statutory text should be liberally construed to permit recovery of the damages sought in his complaint. He refers to the doctrine of lenity, arguing all doubt should be resolved in his favor.

As background, we note California's doctrine of lenity applies to the construction of ambiguous penal statutes. "[I]t is an established rule of construction that ambiguities in penal statutes are to be construed most favorably to the accused." (*People v. Woodhead* (1987) 43 Cal.3d 1002, 1011.) The doctrine of lenity does not apply to the Labor Code in general or to the workers' compensation statutes in particular. However, the Legislature addressed the construction of the workers' compensation statutes in section 3202, which provides those provisions "shall be liberally construed by the courts with the purpose of extending their benefits for the protection of persons injured in the course of their employment." (§ 3202.) This general policy seems contrary to plaintiff's current interests because he would prefer the workers' compensation statute be interpreted so it does not cover the injuries alleged in his complaint.

Moving to the question of statutory interpretation presented by plaintiff's arguments, we consider whether he has "injuries not compensated by this division" within the meaning of subdivision (a)(9) of section 3370. The term "this division" refers to division 4 of the Labor Code (§§ 3200-6002), which governs workers' compensation and insurance. The verb "compensated" is not defined, but the term "[c]ompensation" is defined as including "every benefit or payment conferred by this division upon an injured employee … without regard to negligence." (§ 3207.) We conclude the statutory

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shall be paid to an inmate while he or she is incarcerated. The period of benefit payment shall instead commence upon release from incarceration.… [¶] ... [¶] (7) After release or discharge from a correctional institution, the former inmate shall have one year in which to file an original application with the appeals board, unless the time of injury is such that it would allow more time under Section 5804 of the Labor Code. [¶] ... [¶] (9) This division shall be the exclusive remedy against the state for injuries occurring while engaged in assigned work or work under contract. *Nothing in this division shall affect any right or remedy of an injured inmate for injuries not compensated by this division*." (§ 3370, subd. (a), italics added.)

definition of the noun "compensation" is relevant to determining the meaning of the verb "compensated." Therefore, we conclude an injured inmate is compensated when a "benefit or payment [is] conferred." (§ 3370, subd. (a)(9).) We further conclude the provision of medical treatment constitutes a benefit conferred. (See § 4600 [provision of treatment by employer].)

Applying the foregoing statutory interpretations to the facts of this case, we conclude plaintiff's employer conferred a benefit on him and that benefit "compensated" him for purposes of subdivision (a)(9) of section 3370. Plaintiff received a notice regarding temporary disability benefits dated December 8, 2015, from the State Compensation Insurance Fund. The notice advised plaintiff "that liability for this injury has been accepted. While there are no cash benefits due at this present time per [section] 3370(a)(3), you are entitled to medical treatment to cure or relieve the effects of the injury, which will be provided to you through your institution's medical unit." Plaintiff's complaint included the notice as an exhibit and also alleged: "When plaintiff returned to his yard he was then seen by medical staff [] by way of walking." In addition, his complaint included as attachments many "Health Care Services Request Form[s]" submitted by plaintiff, which include notes and comments by medical staff.

The record before this court establishes that there is not a triable issue of material fact on the question of whether plaintiff was provided a workers' compensation benefit—specifically, medical treatment—due to his injury.[7] As a result, his injuries have been "compensated" in part pursuant to California's workers' compensation statutes. It follows that the last sentence in section 3370, subdivision (a)(9), which refers to "injuries not compensated," does not apply to plaintiff and does not permit him to pursue the claims stated in his first amended complaint.

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[7] This lawsuit does not address the adequacy of the medical care provided or whether medical staff breached the applicable standard of care in treating plaintiff's injuries.

VI. NEGLIGENCE IN SUMMONING MEDICAL CARE

A. Scope of the First Amended Complaint

Here, we consider whether plaintiff's first amended complaint sets forth a negligence claim based on the failure of defendants to summon medical care for plaintiff *after* he fell into the trench. If a failure-to-summon-medical-care claim was adequately pleaded, we must decide whether that claim is barred by the exclusive remedy rule of the workers' compensation statute and, therefore, subject to summary judgment. Alternatively, if such a claim was not adequately pleaded, we must decide whether plaintiff should be allowed to amend his complaint to include such a claim.

In the procedural context presented in this appeal, the resolution of this issue constitutes the first step of the three-step analysis used to decide motions for summary judgment. In completing that step, we must "identify the issues framed by the pleadings." (*Serri, supra*, 226 Cal.App.4th at p. 858; *Brantley v. Pisaro, supra*, 42 Cal.App.4th at p. 1602.) Earlier this decade, the Fourth District discussed the first step of the summary judgment analysis in a section of its opinion labeled "Specific Summary Judgment Issues About Scope of Pleadings." (*Howard v. Omni Hotels Management Corp.* (2012) 203 Cal.App.4th 403, 420–422 (*Howard*).) The principles set forth in *Howard* guide our resolution of the question about the scope of the issues (i.e., legal theories or claims) framed by plaintiff's first amended complaint.

Generally, the scope of the issues properly addressed in a summary judgment motion is limited to the claims framed by the pleadings. (*Howard, supra*, 203 Cal.App.4th at p. 421.) Accordingly, a defendant moving for summary judgment or summary adjudication "is not required to go beyond the allegations of the pleading, with respect to new theories that could have been [pleaded], but for which no motion to amend or supplement the pleading was brought, prior to the hearing on the dispositive motion." (*Ibid.*) When a complaint gives fair notice to the defendants of the theories on which relief is generally being sought, the trial court may read the pleadings broadly, in light of the facts adduced in the summary judgment proceeding. (*Id.* at p. 422.) "The test is

whether such a particular theory … is one that the [defendant] could have reasonably anticipated would be pursued, and whether a request for leave to amend accordingly would likely have been granted ...." (*Id*. at p. 422.)

Here, the trial court correctly completed the first step of the summary judgment analysis. The court stated, "it must review all theories for liability set forth in the [first amended complaint]." The court then identified one theory of liability relating to the fall into the trench and another theory of liability pertaining to the failure "to take reasonable actions to summon or immediately 'get plaintiff the care needed' following his November 24, 2015 injury."

Our independent review of the allegations of the first amended complaint shows that plaintiff explicitly alleged facts that would put an objectively reasonable defendant on notice of a claim based on the negligent failure to summon medical care. The first amended complaint alleged defendants failed to "take reasonable actions to summon, or immediately get[,] plaintiff the care needed" after plaintiff requested medical attention and also required plaintiff to walk on the injured leg from the worksite back to his yard and then to see medical staff. Therefore, we conclude one of the theories on which plaintiff sought relief was the negligent failure to summon medical care.

B. Scope of the Immunity under the Exclusive Remedy Rule

Based on our interpretation of the first amended complaint, we must decide whether plaintiff's failure-to-summon-medical-care claim is barred by the exclusive remedy rule of the workers' compensation statute.

1. Principles Defining Industrial Causation

One of the concepts that defines the scope of the workers' compensation statutes and, thus, the scope of the exclusive remedy rule, is referred to as "industrial causation." "It is by now well established that the [workers' compensation statute's] exclusivity provisions preempt not only those causes of action premised on a compensable workplace injury, but also those causes of action premised on injuries ' "collateral to or derivative

of" ' such an injury." (*King v. CompPartners, Inc.* (2018) 5 Cal.5th 1039, 1051 [injuries arising out of and in the course of the workers' compensation *claims process* are within the scope of the exclusive remedy provision].)

> "As we recently explained in *South Coast Framing, Inc. v. Workers' Comp. Appeals Bd.* (2015) 61 Cal.4th 291, 297, 188 Cal.Rptr.3d 46, 349 P.3d 141 (*South Coast Framing*), section 3600 provides a workers' compensation remedy for an injury linked ' " 'in some causal fashion' " ' to employment. This causation requirement differs markedly from ordinary tort principles, in that ' " ' "[a]ll that is required is that the employment be one of the contributing causes without which the injury would not have occurred." ' [Citation.]" ' (*Id*. at pp. 297-298, 188 Cal.Rptr.3d 46, 349 P.3d 141.) Because of this, 'industrial causation has been shown in an array of scenarios where a work injury contributes to a subsequent nonindustrial injury.' (*Id*. at p. 300, 188 Cal.Rptr.3d 46, 349 P.3d 141.) California courts have held, for example, that '[a]n employee is entitled to compensation if a new or aggravated injury results from medical or surgical treatment for an industrial injury.' (*Ibid*. [citing cases]; see *id*. at p. 294, 188 Cal.Rptr.3d 46, 349 P.3d 141 [workers' compensation remedy available to family of worker who died from the combination of drugs prescribed following a fall at work].) This is true regardless of ' "whether the treatment [was] provided by a physician selected by the employee or by the employer or the employer's compensation carrier." ' (*Id*. at p. 306, 188 Cal.Rptr.3d 46, 349 P.3d 141.) And where the remedy is available as an element of the compensation bargain it is exclusive of any other remedy to which the worker might otherwise be entitled from the employer: 'The employer's compensation obligation is 'in lieu of any other liability whatsoever to any person." ' [Citations.]" (*King v. CompPartners, Inc.*, *supra*, 5 Cal. 5th at p. 1052.)

Accordingly, the principle of industrial causation defines both the scope of the workers' compensation remedy and the scope of the exclusive remedy rule. Here, the new or aggravated injuries plaintiff contends resulted from the failure to summon medical care and from requiring him to walk on the injured knee are linked in some causal fashion to his fall into the trench. Specifically, those additional injuries would not have occurred if plaintiff had not injured his knee in the first place.

Even plaintiff's allegation that he has come to "depend on pain relief medication to help [him] through his days" refers to an injury or harm causally connected to the fall into the trench. In *Ballard v. Workmen's Comp. App. Bd.* (1971) 3 Cal.3d 832, our Supreme Court concluded that if an employee's "addiction [to painkillers] would not have materialized but for the [workplace] injury[,] she is entitled to a full recovery …." (*Id*. at p. 839.) This broad view of causation also applies in cases where the worker commits suicide. "Recovery is proper if it is shown that without the injury there would have been no suicide." (*Id*. at p. 837.)

Based on our Supreme Court's decisions discussing industrial causation and the scope of the workers' compensation statute, we conclude plaintiff's claims relating to new or aggravated injuries are covered by the exclusive remedy provision of subdivision (a) of section 3601. These new or aggravated injuries include the harm resulting from defendants' failure to summon medical care and plaintiff's dependency on pain medication. It follows that defendants are entitled to summary judgment on the ground that all of plaintiff's claims are barred by the exclusive remedy rule.

VII. PENDING PROCEDURAL MATTERS

A. Motion to Proceed on Second Amended Complaint

On May 8, 2019, this court filed plaintiff's notice of motion and motion for leave to proceed on second amended complaint pursuant to Code of Civil Procedure sections 471.5 and 473, subdivision (a)(1). Plaintiff asserts the motion should be given a nunc pro tunc[8] filing date of September 14, 2018, based on the prison mailbox rule and

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8 "Nunc pro tunc" is a Latin phrase that translates to "now for then." (Black's Law Dict. (8th ed. 2004) p. 1100.) A "nunc pro tunc amendment" is an "amendment that is given retroactive effect, usu. by court order." (*Id*. at p. 89.) " 'A nunc pro tunc order or judgment is one entered as of a time prior to the actual entry, so that it is treated as effective at the earlier date. This retroactive entry is an exercise of inherent power of the court, the object being to do justice to a litigant whose rights are threatened by a delay that is not the litigant's fault.' " (*In re Marriage of Padgett* (2009) 172 Cal.App.4th 830, 851.)

the repeated problems that have arisen with his legal mail. In an order filed on May 29, 2019, this court stated the motion was deferred pending consideration of the appeal on its merits.

We interpret plaintiff's motion and arguments as a request for this court to direct the trial court to grant plaintiff leave to file a second amended complaint. (Code Civ. Proc., §§ 43 [appellate court may direct "further proceeding to be had"], 906 [powers of reviewing court].) Plaintiff states a purpose of the second amended complaint is to present the claim that the remaining defendants (1) possessed an independent duty to summon immediate medical care for plaintiff following his injury while on an IWL job site and (2) breached that duty. The conclusion of plaintiff's motion states:

> "The main consideration of the court is whether plaintiff/appellant has asserted an independent claim for damages against the defenda[n]ts to which the exclusive remedy provision of California Labor Code §[§] 3601-3602 may not apply. The plaintiff has amended his complaint, pleading that at the time plaintiff was told that 'there was no one to transport him to medical at this time', the defendants had knowledge and reason to know of the need of immediate medical care, and that the defendants breached their duties[] or stepped out of their coemployee[or] IWL-Supervisorial role."

We conclude there is no need to direct the trial court to grant plaintiff leave to file his second amended complaint because the claim (i.e., legal theory) that defendants committed a second and distinct wrong in failing to summon medical aid was alleged in the first amended complaint. As discussed above, we conclude the exclusive remedy provision extends to any injuries caused by the allegedly wrongful conduct of failing to summon medical care because the concept of industrial causation used to determine the scope of the workers' compensation statute is quite broad. Accordingly, the motion will be denied.

B. Request for Judicial Notice

On June 20, 2019, this court filed plaintiff's request for judicial notice, dated June 4, 2019. This third request by plaintiff relates to the reporter's transcript for the hearing on the motion for summary judgment, defense counsel's reference to an

unpublished appellate decision at that hearing, and the diversion of the funds plaintiff sent to the trial court in an attempt to pay the estimated amount of $227.50 for the reporter's fees.

First, we conclude the reporter's transcript of the hearing is not necessary or useful to our resolution of the merits of the motion for summary judgment. As described in part I of this opinion, we conduct an *independent review* of the motion for summary judgment. The arguments presented at that hearing and the statements of the trial court play no role in our independent review of the merits. Stated another way, what the trial court and the parties said at that hearing does not change the merits of the motion for summary judgment or affect our analysis of the merits.

Second, footnote 12 of the trial court's written order names the unpublished case referred to by defense counsel at the hearing, states it "is an unpublished case which cannot be relied upon by the court," and cites California Rules of Court, "rule 8.115(a)."[9] The trial court's handling of the matter was appropriate and plaintiff does not contend the court's action constitutes misconduct. Thus, the reporter's transcript is not needed or useful to the resolution of any issues raised by defense counsel's reference to an unpublished case. In addition, the reference to the unpublished opinion has not influenced the outcome of this appeal because we have not considered, much less relied upon, that opinion.

Therefore, the request for judicial notice of the reporter's transcript and the documents relating to its preparation and cost is denied.

DISPOSITION

The judgment is affirmed. The parties shall bear their costs on appeal. (Cal. Rules of Court, rule 8.278(a)(5).)

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9 This citation contains a typographical error. California Rules of Court, rule 8.1115(a) addresses unpublished opinions and states they "must not be cited or relied on by a court or a party in any other action."

Appellant's motion for leave to proceed on second amended complaint, filed on May 8, 2019, is denied.

Appellant's request for judicial notice, dated June 4, 2019, and filed on June 20, 2019, is denied.